IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1551 of 2000

with

CIVIL APPLICATIONS Nos. 7844 & 9968 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : NO

SURESHKUMAR MAGANLAL PATEL 43, WARD NO 4,

Versus

STATE OF GUJARAT, THROUGH SECRETARY

Appearance:
MR GI DESAI for Petitioners
MR AJ DESAI, ld.AGP for respondent no.1-State of Gujarat
MR HJ TRIVEDI for respondent no.2-Chairman, Gujarat Pollution Control Board, Gandhinagar.
MR RAJESH DESAI for MR PG DESAI for respondent no.3-Municipal Corporation, Surat.
MR RR MARSHALL for Respondents Nos. 4 to 8

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 01/05/2001

CAV JUDGEMENT

(Per : MR.JUSTICE RAVI R.TRIPATHI)

The petitioners being residents of 43, Ward No.4, House No.366, Begumpura, Dudhara Street, Surat have filed this Special Civil Application with the allegations that:

(i) Begumpura, Dudhara Street, Allaya ni Wadi, Bhatthi Sheri, Gandhi Sheri, Chevali Sheri, Amli Sheri, whole Navapura Golwad form part of residential area and not an industrial area.

(ii) Respondent No.7, namely, Sureshchandra Maganlal Gantiwala (Jariwala) had purchased House No.307 situated in Ward No.4, Begumpura, Dudhara Street from one Kantaben, widow of Maganlal Nanchand.

(iii) That this property was originally residential area but the respondents nos.7 and 8 started manufacturing goods of "Jhari" in this area.

(iv) Similarly, respondents nos.4 and 5 are also running "Jhari" industry in House No.4/284 in Begumpura Dudhara Street.

(v) Respondent No.6 Rajeshkumar Jhariwala who is the owner of Abhaya Jhari Stores is also running a "Jhari" industry in 4/294 and 4/296, Begumpura, Dudhara Street.

(vi) For manufacturing goods of "Jhari", strong acid and other chemicals Methalaine Acid, Assali Acid, Gunkotalete Acid are used in the process of manufacture and in this process, heat is supplied till the acid gets boiled.

(vii) Very dangerous and harmful bad smell is spread on account of the manufacturing process of "Jhari" items and the poisonous chemical smell is spread in the air that it is very difficult for human being to live in such polluted atmosphere.

(viii) All the residents of this area have to close their doors and windows and it is difficult for the people to stay therein to breathe in.

(ix) The industry goes on day and night without break and huge quantity of poisonous acid and chemicals have been stored in the houses of the respondents whereas the properties of this area are made from wood and the possibility of accidental fire cannot be ruled out.

(x) That petitioners and other representatives of this locality requested the respondents to shift their industry to the industrial area just like Pandesara, but the proposal was rejected.

(xi) The people of this locality represented to the Dy.Collector and Divisional Magistrate vide application dated 18th October 1999 and prayed to take action under Sec.133 of the Cr.PC.

(xii) Similar application was given to the Gujarat Pollution Control Board (GPCB) on 18th December 1999.

(xiii) That representation had also been made to Surat Municipal Corporation vide application dated 26th October 1999.

(xiv) That representation was also made to the Dy.Collector and Magistrate vide application dated 14th December 1999.

(xv) Similar application was also given to the GPCB on 11th January 1999.

(xvi) That representation made before the Surat Municipal Corporation vide application dated 26th October 1999 was followed by another representation.

(xvii) Reference has also been made to "Sandesh Newspaper" and "Dhabkar Newspaper".

(xviii) On 11th January 1999, the Engineer, GPCB had advised that the proceedings were sought to be started and thereafter a letter dated 15th February 1999 advising to take necessary action was issued, but no action was taken.

(xix) The officers of the Municipal Corporation, Surat had not taken any action, on the contrary, they try to protect this industry.

The prayer has been made for issuance of writ direction/order to the respondents to shift their industries to the industrial area from the residential area and to take immediate action under the provisions of law and report has been sought.

2. With the allegations as above, the present Special Civil Application was filed on 13th March 2000. The notice was issued on 15th March 2000 and respondents nos.2 and 3 were directed to make site inspection and to make necessary report. In response to the notice issued by this Court, an affidavit-in reply dated 17th April 2000 has been filed by respondent No.7.

3. The respondent No.7 through his reply dated 17.4.2000 has sought to traverse the case of the petitioners by denying the allegations levelled by the petitioners and has submitted that the General Body of the Surat Municipal Corporation had passed a Resolution dated 7.5.64 terming the Jhari manufacture and its process as a 'light home workshop', where the work done or machinery installed are such as could be done or installed in any residential area without detriment to the amenity of that area by reason of nuisance. It has been further stated that the Ministry of commerce (Office of the Development Commissioner for Handicrafts), Government of India, New Delhi had issued a Certificate dated 4.10.85 certifying that Jhari and Jhari items are classified as Handicrafts as per Index in Import Trade Control Policy 1976-77 and the classification is accepted for all purposes. It has also been stated in the reply that originally Jhari industry was controlled by Kanabi Patels and their employees used to be Ranas. Slowly over a period of time people from Rana community have opened their workshops and this has given rise to some resentment. It has been stated that the petitioners are Kanabi Patels whereas the respondents belong to Rana community and it is because of this malafide consideration that the petition has been filed. It has been further stated that the petitioners have not prayed for any relief against one Jethabhai Babubhai dhoriwala, who is also running a Jhari Unit in the same street, while petitioner No.1 himself is Dhoriwala. It has also been stated that at the rear of the house of the petitioner No.1 i.e. Vadvali Sheri there are more than 50 Units manufacturing Jhari. Yet no action has been prayed for against them. It has been further stated that there are approximately 5000 Jhari Units in the City of Surat and they are all in the central Surat and they employ between 1,50,000 to 2,00,000 people and their numbers are increasing regularly. It has been stated

that the history of Jhari in Surat dates back to pre Moghul days and during Moghul rule and, thereafter, during British rule, this business reached its peak and Surat was actually known as a Jhari City. Jhari is manufactured by humble Artisans like respondents and that Jhari manufactured by them has been a part of apparels used by many beautiful women all over the world. In sum and substance their case is that the manufacture of Jhari is only a "light home workshop" and as per the Ministry of Commerce, Government of India itself Jhari has been classified as Handicraft and the manufacturing process does not offend the health conditions in the area in question and it is not hazardous. However, the petitioners have filed an affidavit in rejoinder dated 23.4.2000 contesting the averments made in the reply.

4. The GPCB has placed on record its report wherein it has been stated that in the residential area of Surat, thousands of such small scale industries are being run and the same have been going on for number of years and for generations. It has also been reported that from the inquiries made by them in the nearby area, it was found that common man has no grievance like that of the present petitioners with regard to such units. That such units according to the definition of Government, as contained in the Certificate dated 4th October 1985, Jhari and Jhari items have been classified as handicraft. Material has been placed to show that such units fall within the definition of handicrafts and cottage industries. It is reported that "Broadly speaking, no pollution or unbearable pollution was seen". This report substantially corroborates the case of the respondents.

5. The Municipal Corporation has also filed a report dated 4th April 2000 based on its Officers visits of the site wherein it is stated that:-

(i) so far as the property bearing No.4/284 is concerned, the same is situated in the residential zone as per the drawing of SUDA (Surat Urban Development Authority). The said building consists of groundfloor and two floors having big construction admeasuring 16 Ft in width and 80 Ft in length.

(ii) To the North of the said property, property bearing No.4/283 and to the South property bearing No.4/295 are situated. Towards East of the said property in question, there is a public street of Begumpura-Dudharasheri, and to the West of the property is the public toilet of the Surat Municipal Corporation. On the ground floor of the property in question towards

Western part the machinery for Jhari work are installed. It is also stated in the report that the property is assessed as commercial and while giving details it is stated that as per the report of the Chief Fire Officer dated 1.4.2000 necessary fire extinguisher DCP Ext.10 Kilo Capacity four in number is necessary and notice dated 4.4.2000 is issued for maintaining the same.

(iii) On the point of health norms it is stated in the report that on account of Jhari gilding the fume and foul smell is noticed and through a notice dated 8.1.2000 it was intimated that necessary steps should be taken within 15 days and as said notice was not complied with a complaint was filed in the Municipal Court on 2.2.2000 which is pending before the Court. On the point of licence, it is submitted that as the party concerned has not taken necessary licence for the use of chemicals like lacquer etc. a complaint was filed in the Municipal Court and the said complaint is pending. The report further states that on 28.3.2000 at 11.00 a.m. when the property was inspected defects as mentioned hereinabove were noticed and it further mentions that the machines installed at the groundfloor are run with electric power and the same is used as residence, and the second floor Eastern part is used for Jhari gilding work and for that purpose two machines are operating with electric power and in this process chemicals like lacquer etc. are used and during this process some foul smell is noticed. The temperature of the room is somewhat hot. To see that hot air and foul smell are thrown out of the room on the Western side of the wall of the room an exhaust fan is fitted along with a chimney of about 35/40 ft. made up of galvanized sheet. The Western part is used as residence. The third floor is vacant and it is not used. What is important is that the report makes a specific note that from the Eastern side road during the inspection no smell was noticed and the windows located on the Eastern side were found to be closed.

(iv) The report has also made about the property bearing No.4/294. After giving details of the building use, assessment, fire safety norms, health norms and licence, the report is made about the inspection carried out on 28.3.2000 wherein it is stated that on the first floor Eastern part is pertaining to packing section where packing work of finished goods is carried on. Thereafter, glass cabin office is situated and it is air-conditioned. Then there is space open to sky and in the Eastern portion of the room which is situated at the end, the chemicals used for Jhari gilding work are stored and that room is used as store room in which chemicals

like lacquer etc. are stored. On the second floor in the Eastern portion, machines for Silver gild are in operation. The portion thereafter is open to sky and thereafter in the Western side, heating machines, two in number, are in operation. When these machines are in working condition, the temperature of the room is slightly hot. On the Western wall exhaust fan is fitted and a chimney with galvanized sheet is also fitted. What is important is that the report makes a specific note that a third floor is situated towards the Western side after the open to sky portion of the property. Eastern portion is open and on the third floor gild machines are situated and electricity is used and during that process fume with slightly white colour is caused in a very small quantity and in a very small quantity smell is noticed. In this process chemicals like lacquer are used. Similarly, on the 4th floor towards the Western part in a room chemical gild machine is operated and in that also electricity is used and during the site inspection the windows towards East and West were found to be closed.

(v) The report also states about the property bearing No.4/296. About that property also after recording the building use, the details of assessment, fire safety norms, health norms and licence, report about inspection carried on 28.3.2000 is recorded. It is recorded that in this property also on the first floor and second floor Jhari gild and fast gild heating machines are operated by electric power. On the first and second floors chimneys are installed with exhaust fan. The temperature in these rooms is slightly hot and fumes with white colour and little foul smell is noticed. During this process chemicals like lacquer etc. are used. Chimney fitted in this property is shorter then the Chimney fitted in the property situated towards South and this property is on groundfloor and 4th floor. During the site inspection windows on the Western side of the property were found to be closed.

(vi) Report is also made regarding the property bearing No.4/307. The report after recording the building use, assessment, fire safety norms, health norms, licence etc. records that while inspecting the property on 28.3.2000 at 11.00 am. following defects were noticed. Machines are operated by electric power and in this process no smell is noticed. On the first floor, on the Eastern portion office is situated while towards West of the stair case the machines for Jhari work are operated and they are run by electric supply. In this work no smell is noticed. On the roof of the second floor galvanized iron sheets are used and in the

Eastern portion of the stair case Jhari gilding and heating machines are operated. These machines are operated by electric supply and during the process chemicals like butyl, lacquer etc. are used. During this process little smell is noticed and the temperature of the room is also found to be slightly hot. For exhausting the hot air and the smell on the Northern side wall of the room an exhaust fan is fitted and also galvanized iron sheet is fitted. The Western portion is used as store room in which chemicals like butyl, lacquer etc. are stored. During the site inspection the windows of the East and West were found to be closed.

6. We have considered the pleadings of the parties, the submissions made on their behalf and the report made by the Gujarat Pollution control Board and have also gone through the report made by Surat Municipal Corporation. On the basis of the material placed on record, Jhari manufacturing has to be taken as a 'light home workshop' as accepted by the Municipal Corporation itself and it is also clear from the Certificate issued by Ministry of Commerce, Government of India that Jhari has been classified as a Handicraft. The report made by the Gujarat Pollution control Board under signatures of four Officers i.e. S.S.A., D.E.E., S.O. and E.E. makes it clear that in the residential areas of Surat there are thousands of such 'light home workshops' and such 'light home workshops' are going on in the City since generations and on the basis of the contacts made with the common man, there is no grievance and such Units, according to the Government, are Handicrafts. The Gujarat Pollution control Board has made a categorical report that broadly speaking in such workshops no such intolerable pollution is found. The Municipal Corporation of Surat in its report dated 4.4.2000 based on the site inspection dated 28.3.2000 signed by Incharge Deputy Health Officer, Central Zone; Zonal Officer; Assistant Commissioner and Commissioner has reported in the concluding part of it that the machine is being run by electric power and during the process there is no foul smell and in the front portion of the Cellar there is no foul smell. No foul smell is there in the first floor also and there also the machine is run through electric power, on the terrace of the second floor there are galvanised sheets. There is a gilding work with heating and that is also carried on through electric power. During this process of gilding etc. cello, butyl, lacquer are being used where there is little bit smell and the temperature is little hotter but for the exit of the hot air and the smell there are exhaust fans and galvanised Chimney is fitted and the western part is used

as a store room where the chemicals etc. are being stored. The windows on the eastern and western side were found to be closed.

7. On behalf of the petitioners, the following cases were cited:-

(a) In the case of D.S.Rana v. Ahmedabad Municipal Corporation, reported in AIR 2000 Gujarat 45, the operation of melting gold and silver ornaments by running furnaces, causing nuisance in residential locality was considered, which has no bearing to the facts of the present case.

(b) In the case of K.Ramakrishnan v. State of Kerala, reported in AIR 1999 Kerala 385, in the context of Article 21 - right to live, the Court was concerned with the question of maintenance of health and environment and that smoking of tobacco in any form in public places was found to be illegal and unconstitutional and violative of Article 21 and it has no application to the facts of the present case.

(c) The case of M.C.Mehta v. Union of India, reported in AIR 1998 SC 2963 was a case of vehicular pollution.

(d) In the case of M.C.Mehta v. Union of India, reported in AIR 1999 SC 3192, the Court had considered the environmental pollution in and around Taj Trapezium by coal based industries.

(e) Re:Bhavani River v/s Sakthi Sugars Ltd., reported in AIR 1998 SC 2578, was a case of water pollution as discharge of objectionable effluents from distillery in river and adjoining areas. In this case, the Supreme Court observed that in such cases of pollution, the High court had fell in error to dispose of the petition on the basis of the consent of the Pollution control Board and such matters should not normally be decided merely on the consent of the Pollution control Board.

(f) The case of A.P.Pollution Control Board v. M.V.Nayudu, reported in AIR 1999 SC 812 was a case in which the precautionary principles were explained by the Court in the mater of environmental protection and it was held that onus of proof is on person who wants to change

the status quo and the required standard of proof.

(g) The case of Obayya Pujari v. Member Secretary, K.P.S.C.B., Bangalore was a case of environmental pollution caused by stone crushing business. It was a case of unplanned stone crushing activity causing pollution and the Court directed the State Government to immediately formulate a policy regulating carrying on of stone crushing business.

8. We have also examined the grievance raised by the petitioners on the basis of the principles, as have been laid down in the aforesaid cases and we find that it is hardly a case in which a direction is necessary against the respondents to shift their industries to the industrial areas from the residential areas. The very fact that thousands of such 'light home workshops' are being run in different residential zones and such industries are being run traditionally as a part and parcel of the family business of the residents since time immemorial without causing pollution to the extent of the requirement of the shifting of all these 'light home workshops', when the Ministry of Commerce has classified the Jhari business as Handicraft. The instances are not lacking where the Handicraft industries are being carried on in residential areas not only in the city of Surat but elsewhere also. Even if we do not go solely on the basis of the report made by Gujarat Pollution Control Board, considering the facts and circumstances of this case it clearly emerges that it is not a case in which any such pollution is being caused, which makes it imperative to issue a direction for shifting of the residents from these areas. On the basis of the material available on record, the facts and circumstances of the case in totality and the reports made by the Gujarat Pollution control Board and the Municipal Corporation, we find that it is hardly a case in which any direction is required to be issued by this Court at the instance of the petitioners so as to direct the shifting of the residents from the area in question. Petitioners are seeking the change of status-quo and the onus of proof was on them which has not been discharged to the required standard of proof as laid down by the Apex Court in the case of A.P.Pollution Control Board v. M.V.Nayudu (supra).

9. In view of this conclusion arrived at by us, we do not find it necessary to go into the case of the respondents that this petition has been filed by the

petitioners for extraneous reasons or on the basis of the dispute between the members belonging to Ranas and Kanabi Patels. For the reasons of public health, the notice was issued to the authorities like Pollution Control Board and Surat Municipal Corporation to make the reports. Both the authorities, who are otherwise also under obligation to look into such grievances of the public, have taken pains to carry out the inspection and have made the reports before us. These reports cannot be ignored altogether and on over all consideration of the totality of the facts and circumstances of this case as also on consideration of the reports, it is discernible that no case is made out for the reliefs prayed for by the petitioners in this case.

10. The upshot of the discussion, as aforesaid, is that this Special Civil Application fails and the same is hereby rejected. Notice is hereby discharged. No order as to costs.

Before parting with the Judgment, we may also put it on record that the petitioners had moved Civil Application No.7844/2000 dated 25.8.2000 for pronouncement of judgment and if not possible, to refer this matter to the larger Bench being important question. We do not find that the case is required to be referred to larger Bench. Yet another Civil Application 9968/2000 dated 12.10.2000 was moved with the prayer to take the documents dated 1.9.2000 with the heading of 'Jhari Park Surat' on record has been filed. This Civil Application No.9968/2000 came up before the Court on 19.10.2000 and it was ordered that since the case is already going on for dictation of order and posted for further dictation of order, the Civil Application shall be considered at the time of dictating the order. In fact the dictation was started on 5.10.2000 but could not be resumed because of heavy board till the last day of the sittings. Hence the order had to be made C.A.V.

We have considered these documents also filed in Civil Application No.9968/2000 which show that for the development of the historical business of Jhari of Surat, various Jhari Organisations, with the aid of Chamber of Commerce, Gujarat Housing Board and State had considered to organise a 'Jhari Park'. In our opinion, these documents have no impact whatsoever on the merits of the case. In view of the conclusion arrived at by us, as recorded above, no orders are required to be passed on these two Civil Applications and the same also stand disposed of accordingly.

(M.R.CALLA, J)

(R.R.TRIPATHI,J)